



**Billing Code 3510-BX-P**

**DEPARTMENT OF COMMERCE**

**Office of the Secretary**

**15 CFR Part 4**

**Docket No. 161103999-6999-01**

**RIN: 0605-AA46**

**Public Information, Freedom of Information Act and Privacy Act Regulations**

**AGENCY:** Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** This rule proposes revisions to the Department of Commerce's (Department) regulations under the Privacy Act. The Department has issued a notice of its intent to establish a new system of records entitled "COMMERCE/DEPARTMENT-27, Investigation and Threat Management Records," which includes system exemptions from certain provisions of the Privacy Act. The Privacy Act regulations are being updated to make technical changes to the applicable exemptions as a result of the new system of records, COMMERCE/DEPARTMENT-27. The Privacy Act regulations are also being updated to reflect organization changes affecting the Department's officials authorized to deny requests for records under the Freedom of Information Act, and requests for records and for correction or amendment under the Privacy Act.

**DATES:** To be considered, written comments must be submitted on or before [insert date 30 days after publication in the FEDERAL REGISTER]. If no comments are received, the rule will

become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 0605–AA46, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 482–0827. Include the RIN 0605–AA46 in the subject line.
- *Mail:* Dr. Michael J. Toland, Deputy Chief Freedom of Information Act Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave, NW, Room 52010, Washington, DC 20230.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to [regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Toland, Deputy Chief Freedom of Information Act Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave, NW, Room 52010, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** This rule proposes revisions to the Department’s regulations under the Privacy Act. In particular, the action will amend the Department’s Privacy Act regulations regarding applicable exemptions to reflect a new Department wide systems of records notice published since the last time the regulations were updated. The Department has issued a notice of its intent to establish a new system of records entitled

“COMMERCE/DEPARTMENT–27, Investigation and Threat Management Records,” which includes system exemptions from certain provisions of the Privacy Act. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions). Specifically, pursuant to 5 U.S.C. 552a(j)(2), all information about an individual in the record which meets the criteria stated in 5 U.S.C. 552a(j)(2) are exempted from the notice, access and contest requirements of the agency regulations and from all parts of 5 U.S.C. 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) on condition that the 5 U.S.C. 552a(j)(2) exemption is held to be invalid, all investigatory material in the record which meets the criteria stated in 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 13526, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel. Additionally, the revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in Appendix B (Officials Authorized To Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act). Specifically, this proposed action removes the reference to the “Office of Administrative Services: Director,” and replaces it

with the “Office of Facilities and Environmental Quality: Director; Deputy Director,” under the Assistant Secretary for Administration (ASA). The Department’s ASA realigned the functions formerly under the “Office of Administrative Services” to existing administrative functions and aligned facility-related programs and operations under the “Office of Facilities and Environmental Quality.” The proposed actions better allocated responsibilities, aligned similar functions, improved internal controls and streamline reporting relationships. This proposed amendment updates the rules to implement that change. *See* Department Administrative Order 20-1, sections 1 and 4. This proposed action adds as a denying official the Deputy Chief FOIA Officer under the Office of Privacy and Open Government (OPOG). Previously, the Director of OPOG served as the Deputy Chief FOIA Officer, but now this position serves as the Department’s Chief FOIA Officer. This action also removes the reference to the “Bureau of Economic Analysis: Director,” and replaces it with the “Bureau of Economic Analysis: Freedom of Information Act Officer” under the Economics and Statistics Administration (ESA). Previously, the ESA FOIA Officer administered the FOIA program for the Bureau of Economic Analysis (BEA). This proposed action merely separates the administration of the BEA FOIA program from the ESA program, as well as designates a BEA FOIA Officer and aligns the BEA FOIA program with other FOIA programs in the Department.

*Public Participation:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Department. If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of

your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of the comment may not be posted on <http://www.regulations.gov>. Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please *see* the **FOR FURTHER INFORMATION CONTACT** paragraph.

#### CLASSIFICATION

##### *Regulatory Flexibility Act*

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This final rule amends the Department’s Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. These amendments are administrative in nature and will not impose a financial or regulatory impact on anyone, including small entities. The applicable exemptions apply to information collected to establish identity, accountability, and audit control of electronic or other digital certificates of assigned personnel who require access to Department of Commerce electronic and physical assets. The information collected is provided on a voluntary basis, with no cost incurred by individuals.

*Executive Order 12866*

It has been determined that this notice is not significant for purposes of E.O. 12866.

*Paperwork Reduction Act*

This regulation does not contain a “collection of information” as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**List of Subjects in 15 CFR Part 4**

Freedom of information, Privacy.

Michael J. Toland  
Department of Commerce  
Deputy Chief FOIA Officer  
Department Privacy Act Officer

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR part 4 as follows:

**PART 4—DISCLOSURE OF GOVERNMENT INFORMATION**

- 1. The authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3717; 41 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

- 2. Amend § 4.33 by adding paragraph (b)(5) to read as follows:

**§ 4.33 General exemptions.**

\* \* \* \* \*

(5) *Investigation and Threat Management Records*—COMMERCE/DEPT–27. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of

the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity of the agency, to prevent disclosure of classified information as required by Executive Order 13526, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

■ 3. Amend § 4.34 by revising paragraph (a)(1), (b)(1), and (b)(4)(i); and by adding (b)(2)(i)(G) to read as follows:

**§ 4.34 Specific exemptions.**

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are: COMMERCE/BIS-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE-PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, COMMERCE/DEPT-14, COMMERCE/DEPT-25, and COMMERCE/DEPT-27.

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(b)(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT-12, COMMERCE/BIS-1, COMMERCE/NOAA-5, COMMERCE/DEPT-25, and COMMERCE/DEPT-27 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.

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(2)(i) \* \* \*

(G) Investigation and Threat Management Records—COMMERCE/DEPT–27, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

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(b)(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–1;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–3;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3;

(H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT–13;

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14;

(K) Access Control and Identity Management System—COMMERCE/DEPT–25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid; and



(L) Investigation and Threat Management Records—COMMERCE/DEPT–27, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid.

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■ 4. Amend Appendix B to Part 4 by revising the entries for “ASSISTANT SECRETARY FOR ADMINISTRATION” and “ECONOMICS AND STATISTICS ADMINISTRATION” to read as follows:

**Appendix B to Part 4—Officials Authorized To Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act.**

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#### ASSISTANT SECRETARY FOR ADMINISTRATION

*Office of Civil Rights:* Director

*Office of Budget:* Director

*Office of Privacy and Open Government:* Director; Deputy Chief FOIA Officer; Departmental Freedom of Information Officer

*Office of Program Evaluation and Risk Management:* Director

*Office of Financial Management:* Director

*Office of Human Resources Management:* Director; Deputy Director

*Office of Facilities and Environmental Quality:* Director; Deputy Director

*Office of Security:* Director

*Office of Acquisition Management:* Director

*Office of Acquisition Services:* Director

*Office of Small and Disadvantaged Business Utilization:* Director

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## ECONOMICS AND STATISTICS ADMINISTRATION

*Office of Administration:* Director

*Bureau of Economic Analysis:* Freedom of Information Act Officer

*Bureau of the Census:* Freedom of Information Act Officer

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[FR Doc. 2016-31314 Filed: 12/30/2016 8:45 am; Publication Date: 1/3/2017]